

Creative Plumbing and Construction, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 525, AFL-CIO, CLC and Greg G. Silva. Cases 28-CA-14143 and 28-CA-14268

February 29, 2000

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND BRAME

On February 4, 1998, the National Labor Relations Board issued an unpublished Order, *inter alia*, adopting the administrative law judge's findings and conclusions and ordering Creative Plumbing and Construction, Inc., to make whole employee Greg G. Silva for loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act.¹

A controversy having arisen over the amount of backpay due discriminatee Greg G. Silva, on August 11, 1999, the Regional Director for Region 28 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated October 7, 1999, the Deputy Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 14, 1999, summary judgment would be sought. The Respondent filed no answer.²

¹ This Order was enforced by the Ninth Circuit in an unpublished judgment dated March 19, 1999 (Case 98-71339).

² By letter to the Regional Office dated January 6, 2000, the Respondent's president, Peggy Polinski, stated that "[o]n November 24, 1999, Mr. Overstreet [the Regional Director for Region 28] was notified that Creative Plumbing Inc. is no longer in business. That it is a sole proprietorship at this time. And also that both myself and Ronald Polinski are going to a Chapter 7 Bankruptcy. There is no money or assets from the corporation and never was." This letter does not purport to be an answer to the compliance specification, nor can it be considered as such under Sec. 102.56(b) of the Board's Rules and Regulations, which requires that an answer to a compliance specification "shall specifically admit, deny or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial."

In addition, although the Respondent claims to be in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the

On January 27, 2000, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On February 1, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatee, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Creative Plumbing and Construction, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall make whole the individual named below, by paying him the amount following his name, plus interest and minus tax withholdings required by Federal and state laws:

Greg G. Silva

\$5,073.14

automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.